87-922

Supreme Court, U.S.
FILED
NOV 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

IN RE L. SHYRL BROWN

PETITION FOR WRIT OF MANDAMUS

TO THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

L. Shyrl Brown, Defendant, Petitioner
in person
180 North First East
Richfield, Utah 84701
Phone: (801) 896-5730

38 pp

QUESTIONS PRESENTED

1. Does District Court lack jurisdiction?
2. Can Brown be deprived of Due Process of Law?
3. Can Brown be deprived of Trial by Jury?
4. Can Brown be deprived of right to appeal?

PARTIES

Calvin Gould, U. S. Magistrate

Aldon J. Anderson, Judge

David Sam, Judge

All of U.S. District Court for the District of Utah - Central Division.

In addition , United States may be a party but has never properly appeared [Rule 7(a) and Rule 10(a), FRCP].

NO COMPLAINT HAS BEEN FILED.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Petitioner, L. SHYRL BROWN, respectfully prays a WRIT OF MANDAMUS issue granting relief as follows:

1. District Court (hereafter-DC) warrant be vacated and seized property returned to owners.

2. All findings, rulings, decisions and sanctions vacated.

3. Such other relief as pleases the court.

OR IN THE ALTERNATIVE

1. DC ordered to move the matter forward with Due Process of Law, to a final judgment ON THE MERITS, governed by Federal Rules of Civil Procedure (hereafter-FRCP) and Title 28 U.S. Code.

2. Order a complaint filed with allegation of jurisdiction by a real plaintiff, serve a summons, allow answer, allow discovery, JURY TRIAL ON THE MERITS, and issue a final judgment on all issues.

3. Such other relief as pleases the court.

QUESTIONS PRESENTED

1. Does District Court lack jurisdiction?
2. Can Brown be deprived of Due Process of Law?
3. Can Brown be deprived of TRIAL BY JURY?
4. Can Brown be deprived of right to appeal?

PARTIES

In addition to Respondents named, United States may be a party but has never properly appeared [Rule 7(a) and Rule 10(a), FRCP]. NO COMPLAINT HAS BEEN FILED.

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OPINIONS AND REPORTS

Calvin Gould issued the Warrant July 12, 1984. Property was seized July 17, 1984. Judge Anderson denied my motion to vacate November 26, 1984. The Tenth Circuit denied my Petiton for WRIT OF MANDAMUS July 16, 1985. The Tenth Circuit denied my interlocutory appeal and imposed sanctions on July 7, 1987. Rehearing denied in banc Sept. 11, 1987. Notice of appeal filed Oct. 7, 1987.

JURISDICTION

All possibilities of obtaining relief in lower courts having been exhausted, the jurisdiction of this court is invoked under Art III, Sec 2, Cl 2, U.S. Constitution and 28 USC 1651(a). I seek review of DC warrant of July 12, 1984 and failure of DC to move the matter forward in due process, ON THE MERITS, to final judgment.

CONSTITUTIONAL PROVISIONS

4th Amendment - The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and

seizures shall not be violated..."

5th Amendment - "...nor shall any person...be deprived of life, liberty or property, without due process of law..."

7th Amendment - "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

DISTRICT COURT JURISDICTION

I can not state DC jurisdiction because NO COMPLAINT OR JURISDICTIONAL STATEMENT has been filed.

REASONS FOR ALLOWING THE WRIT

The writ should be granted because the DC warrant was directed where DC lacked jurisdiction. If the court finds DC jurisdiction, the writ should be granted because DC has departed so far from the accepted and usual course of judicial proceedings calling for this court's power of supervision. This plus the fact the circuits are in disarray.

Mandamus appears proper and the only means of obtaining relief.

> "The writ is appropriately issued, however, when there is 'usurpation of judicial power' or a clear abuse of discretion..." Schlagenhauf v. Holder, 379 US 104, 110.

A rule of procedure was reviewed, here numerous FRCP are ignored by DC.

> "The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. (Citations). As we have observed, the writ 'has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" Kerr v US Dist Court, 426 US 394, 402.

I believe this matter fits within all the conditions in Kerr, supra. I am guaranteed the relief demanded because of constitutional guarantees in the 4th, 5th and 7th Amendments.

Here DC acted outside its jurisdiction and exercised clear usurpation of power in seizing property and denying usual and common procedural rights after the seizure.

I have no other means of obtaining relief. If I appear further in DC, Judge Sam will impose further sanctions and prison sentences upon me. If I appear further in the Tenth

Circuit, it will impose further sanctions and prison sentences upon me.

DISTRICT COURT LACKS JURISDICTION

DC lacks jurisdiction for the following reasons and the matter should be dismissed under Rule 12(h)(3), FRCP:

1. No plaintiff has appeared. (Rule 10(a), FRCP). L. Shyrl Brown is the Defendant and only party.

In Babbitt v UFW, 442 US 289, 298 (1979), this court summarizes basic inquiry as:

> "...The basic inquiry is whether the 'conflicting contentions of the parties ...present a real, substantial controversy between the parties have adverse legal interests, a dispute definite and concrete, not hypothetical or abstract.' (citations)"

2. NO JURISDICTIONAL STATEMENT in a complaint has been filed by any plaintiff; therefore, there is no proper pleading or proof of jurisdiction.

3. The warrant issued against private property located in the municipality of Richfield City, State of Utah, where there is NO FEDERAL JURISDICTION. The United States

vacated their jurisdiction (28 Stat. 107, Utah Enabling Act) when Utah was admitted into the Union on an EQUAL FOOTING with the original states. (See Utah Div of State Lands v US, Supreme Court No 85-1772, decided June 8, 1987.)

4. There is not now, nor has there been, a cause of action (civil action, complaint) against me in this matter.

5. There is NO FINAL JUDGMENT or LIABILITY AT LAW AGAINST ME.

6. There is NO FEDERAL TAX LIEN in evidence.

> "But when the States of Kansas and Colorado were admitted into the union they were admitted with the full powers of LOCAL SOVEREIGNTY which belonged to the other states." California v. US, 57 L Ed 2d, 1018, 1026, Emphasis added.
>
> "And if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative; because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a state or elsewhere, except in the cases in which it is expressly granted." Pollards Lessee v. Hagan, 3 How 212, 223.

"This reference to a suggestion by counsel, itself in the alternative, falls far short of the definite and general holding which appellant asserts, and we find no reason for giving it that effect, in view of the well-settled rule that federal jurisdiction can rest only upon specific constitutional and statutory authority... It follows that no ground for federal jurisdiction appearing the judgment must be reversed." People v Bruce, 129 F2d 421, 424, 425.

"However, where the pleadings show on their face that the court has no jurisdiction of the subject matter, or that the claim set forth is plainly without color or merit, or the pleadings are such that it is impossible to ascertain whether the jurisdiction of the court has been evoked, the court has no jurisdiction to proceed further than to decide to refuse to take cognizance." 21 CJS §43.

"A court has no jurisdiction of rights or action in rem where the property in controversy lies without the limits of the court's control and its process can not reach the locus in quo." 21 CJS §43.

"If property to which a lien attached is under jurisdiction of another court, government must submit to the court even if the latter is state court." Smith v US, 254 F2d 865.

"A litigant may choose the jurisdiction to which he will apply for relief, but to stay there he must show that jurisdiction over both the subject matter and the parties exists." Smith Sep Corp v Dillon, 98 F2d 521.

> "Territorial jurisdiction has been defined as the power of the tribunal considered with reference to the territory within which it is to be exercised, connotes power over property and persons within the territory, and has been distinguished from jurisdiction over subject matter. The territorial jurisdiction of a court is a matter of substance and not of form, a limitation which is fundamental and not merely theoretical." 21 CJS §20

There is no pleading or proof of DC jurisdiction. For any one or all of the above reasons, the court should dismiss the matter for lack of jurisdiction.

RELIEF IN THE ALTERNATIVE

If the court can find DC jurisdiction (in the absence of affirmative pleading complaint and adverse party), the court should grant relief by ordering DC to proceed with Due Process of Law according to FRCP. I am a citizen of the State of Utah and am guaranteed Due Process of Law by the 5th Amendment, U.S. Constitution.

As here, where property has been seized PRIOR TO FINDING LIABILITY OR FINAL JUDGMENT, Rule 64, FRCP applies. The "...action in

which any of the foregoing remedies is used shall be commenced and prosecuted...pursuant to these rules." "A civil action is commenced by filing a complaint." Rule 3, FRCP. A summons shall issue and be served with a complaint, Rule 4(a), FRCP, and an answer allowed, Rule 7(a), FRCP. A real party should appear. Discovery should be allowed. The matter must be brought to JURY TRIAL ON THE MERITS (Rule 38(a), FRCP).

I believe this briefly describes usual, ordinary, due process pursuant to the 5th Amendment and rules of the court. This entire process has been circumvented and my rights denied IN FACT.

There is a division of the circuits on this issue of due process.

It appears as in this matter and this circuit that when a bureaucrat places numbers on a piece of paper, it is an end to due process whether or not the numbers are supported by proper procedure, law or fact.

The Second Circuit disagrees in US v O'Connor, 291 F2d 520, 527, 528.

> "The question thus becomes whether in a suit under §7403 the assessment is conclusive, as it would be in a summary method of enforcement, or presumptive but inconclusive, as it would be in an action at law on the assessment or on a bond to secure its payment. A number of cases have stated the latter. (Citations) In addition to United States v. Hauser, supra, there is also some slight authority for the former view, United States v Briglia, D.C.S.D.N.Y.1960, 182 F Supp 271. We think the closer analogy is to the action at law on the assessment; when the Government seeks the aid of the courts in enforcing the assessment in any form, it opens the assessment to judicial scrutiny in all respects. (Citations and history recited)"

The Ninth Circuit also disagrees with the Tenth in US v Coson, 286 F2d 453, 463.

> "In developing that conclusion many circumstances tend to show that not only were these required procedures not complied with but that Coson was not a taxpayer and not liable for the tax to begin with...But that case agrees with what we hold here, that in an action of the kind here involved plaintiff may attack as irregular or valueless 'from a procedural standpoint',and may raise the question whether the Government complied with required procedures***or whether by error the assessment was made against a taxpayer other than the one intended."

Of course, we can not know or decide the MERITS OF THE CLAIMS until JURY TRIAL and FINAL JUDGMENT.

TRIAL BY JURY

This citizen of Utah is guaranteed trial by jury by 7th Amendment, U.S. Const and Art I, Section 10, Const. of Utah.

> "It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries..." 28 USC 1861.

Rule 38(a), FRCP, also guarantees trial jury.

The Tenth Circuit disagrees with itself on jury trial.

> "In action brought by Government for collection or recovery of taxes, trial by jury may be had as a matter of right. 26 USCA (IRC 1954) §7401; USCA Const. Amend. 7; Fed. Rules Civ. Proc. rule 38(a), 28 USCA." US v Anderson, 584 F2d 369 (1978), page 369, #4.

Clearly, I am entitled to TRIAL BY JURY. It is the duty of this court to protect that guaranteed right. Mandamus is the only remedy available to me.

FINAL JUDGMENT

This defendant was compelled into court by seizure of private property. Now there, I demand final judgment ON THE MERITS deciding all issues of fact and law. This is within my rights, the usual ordinary procedure, and should not be denied by this court.

RIGHT OF APPEAL

The courts have repeatedly held a matter can not be appealed until final judgment deciding all issues. DC refuses to move the matter forward to final judgment. At the same time, DC refuses to return the seized property to the owners. Mandamus is the only remedy available for relief. If the court fails to grant relief my RIGHT TO APPEAL is also denied.

SANCTIONS

This court should vacate all sanctions against me. All I have done in court is demand by rights and that which is usual, common and ordinarily available to all litigants in federal court. My demands

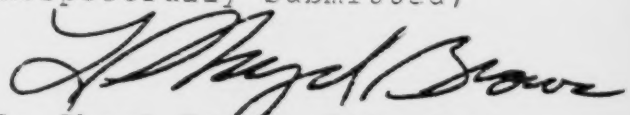
have centered around and within the Constitution, Title 28, USC, and FRCP. All things should be litigated as a matter of course according to prescribed procedures. It is not I who have offended the system, rather it is the inferior courts.

If sanctions can be imposed they will deny me access to the courts as well as all other defendants. The chilling effect upon constitutional rights will be so severe as to destroy 4th, 5th and 7th Amendment protections.

For any one or all of the above reasons this court should grant the Petition and demanded relief.

Dated
Nov. 2, 1987

Respectfully submitted,



L. Shyrl Brown, Defendant,
Petitioner, in person.
180 North First East
Richfield, Utah 84701
Phone: (801) 896-5730

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH - CENTRAL DIVISION

IN THE MATTER OF THE TAX INDEBTEDNESS OF L. SHYRL BROWN,

Civil No. Misc #84-121

ORDER FOR ENTRY ON PREMISES TO EFFECT LEVY

Frank Pritchett, a Revenue Officer of the Internal Revenue Service, having filed an Application requesting authorization to enter the premises located at 46 West 100 North, Richfield, Utah 84701, in order to seize property in satisfaction of unpaid federal taxes, together with an Affidavit in support of that Application and the Court finding, on the basis of that Application and Affidavit, that there is property or rights to property at that location belonging to the above-captioned taxpayer which are subject to seizure by the United States pursuant to 26 USC §6331;

IT IS ORDERED AS FOLLOWS:

(1) That Frank Pritchett and/or other

designated Revenue Officers are authorized to enter the premises described and to levy and seize, pursuant to 26 USC §6331;

(2) That in making this levy and seizure, the Revenue Officers shall enter the premises only during the daylight hours and do so within ten (10) days of the date of this order;

(3) That such Officers shall return to the court for further aid and directions if any violence either occurs or is believed likely to occur during the implementation of this order.

Dated this 12 day of July, 1984, at Salt Lake City.

s/ Calvin Gould, U.S. Magistrate

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH - CENTRAL DIVISION

IN THE MATTER OF THE TAX INDEBTEDNESS OF

L. SHYRL BROWN

ORDER DENYING DEFENDANT BROWN'S MOTION TO VACATE WRIT OF ENTRY

C-84-651A

C. William Ryan for the United States

L. Shyri Brown, pro se.

This order will constitute the Court's findings of fact and conclusions of law pursuant to rule 52. In this case defendant Brown sought to vacate a writ of entry which allowed the Internal Revenue Service ("IRS") to enter Mr. Brown's place of business, seize his personal property and padlock Mr. Brown's building in order to secure the personal property.

I. Facts

Mr. Brown failed to file a tax return for the calendar years of 1971 through 1983. Under applicable statute when a taxpayer fails to file, the IRS can assess the taxes due. 26 USC 6020. On October 1, 1982 the Service determined Mr. Brown's tax liability for the years 1971, 1972, 1973. On October 4, 1982, the service notified Mr. Brown that he had a deficiency and that Mr. Brown has 90 days to file a petition with the United States Tax Court. Exhibit B. Mr. Brown did not

file a petition with the tax court but instead wrote a letter to the Salt Lake office of IRS claiming that the IRS did not have jurisdiction over him. Exhibit C. On May 4, 1983, the IRS assessed the taxes against the defendant. Ts at 20. On May 9, 1983, the IRS gave the defendant notice of the assessment and a demand for payment. Id. Defendant Brown never paid the assessment. Id. On May 17, 1984, the IRS filed notices of tax liens with the Sevier County Recorder on Mr. Brown's property.

The IRS then located Mr. Brown's dental office where it believed that Mr. Brown had assets which could be seized for the nonpayment of taxes. On July 12, 1984 a revenue agent went to the magistrate and applied for a writ of entry. In support of the writ, the agent executed an affidavit which set forth the assessment, notice of assessment to the defendant, demand for payment, and failure to pay the assessed tax. The affidavit also listed the address of Mr. Brown' dental

office at 46 West 100 North, Richfield, Utah. The affidavit indicated that the writ was sought to enter the office and seize the defendant's dental equipment, furniture and office equipment. Exhibit F., Ts. 20-21.

Based on the application and affidavit, The Untied States magistrate executed a writ of entry dated July 12, 1984. Pursuant to that writ on July 17, 1984, IRS personnel entered Mr. Brown's dental office and served Mr. Brown with the executed writ of entry and IRS Levy. The IRS inventoried the office equipment and furniture and gave a copy of the inventory to Mr. Brown. The defendant removed certain business records and at least $1,000 in tools. The IRS then changed the locks on the doors in order to secure the seized property. Ts. 19-23, 28-33.

Mr. Brown filed a motion to vacate the IRS writ of entry and a hearing on the motion was held on August 7, 1984.

II. DISCUSSION

Throughout a more than ten year battle

with the IRS, Mr. Brown has consistently argued that the IRS, the magistrate and now this court cannot assert jurisdiction over him. He contends further that he is "free and sovereign citizen." Defendant's objections to proposed findings of fact at 1. The defendant ignores the present statutory powers of the IRS and this Court and the judicial precedent determining the constitutionality of the income tax laws here involved. Under the circumstances it is absolutely settled law that this Court has jurisdiction over the person and issues involved in this proceeding. Under 26 USC §7402 this Court can hear and adjudicate applications for writs of entry. Defendant cites absolutely no viable authority for the proposition that this Court cannot maintain jurisdiction over him.

The defandant continues to argue that he has been denied due process. He fails to grasp what due process is. He had a day in court in which he presented his side of this case. His view of the facts and law was

ultimately rejected. Nevertheless he still feels that unless this Court rules in his favor he has been denied due process. Due process means a full and fair opportunity to present one's side of the case. The defendant has had that and more. The IRS certainly has been long suffering with him; more than thirteen years have lapsed since he first failed to file a return. Accordingly, defendant's due process arguments are utterly without merit.

Also without merit is the argument that the writ of entry violates due process. The magistrate has authority to issue writs of entry and warrants upon showing of probable cause pursuant to Fed R Crim P 41(a). But an important distinction must be drawn between a criminal warrant and an IRS writ of entry. Under Carlson v United States, 580 F2d 1365 (10th Cir. 1978), the standard for probable cause in an IRS writ of entry is not the same for a criminal warrant. Thus, in an application for such writ of entry,

theIRS must estabish by affidavit that: (1) it has a right to levy and seize assets of the taxpayer; this means proper assessment, notice of assessment to the taxpayer; demand for payment, and nonpayment, pursuant to 26 USC §§ 6213, 6303 and 6331; and (2) there is probable cause to believe that there are assets which may be seized on the premises to be entered.

The affidavit which the magistrate considered properly contained assessment, notice and demand, and nonpayment by the taxpayer. Moreover, the affidavit also presents a basis for probable cause to believe there were seizable assets on the premises to be entered because the revenue officer identified that the address where the writ was to be served was the dental office of Mr. Brown. The revenue officer viewed the county assessor records which listed L. S. Brown as the owner of dental equipment, furniture and office equipment located at 46 West 100 North, Richfield, Utah. Thus, a reasonable person

would conclude that Mr. Brown's assets might be found at that location. Therefore, the writ of entry executed on July 12, 1984 by the magistrate was lawfully entered and was based upon probable cause. See exhibit F.

Furthermore, due process does not require a prior hearing before the magistrate issues the writ of entry. Carlson at 1373-74. Once the IRS effected the seizure the law allows a reasonable means to secure the seized property. Padlocking the entrance has been specifically held to be reasonable. See eg, Heck v Walters, 523 F2d 23, 25 (9th Cir. 1975).

Accordingly, defendant's motion to vacate the writ of entry is hereby DENIED.

DATED this 26 day of November, 1984.

s/ Aldon J. Anderson
Aldon J. Anderson
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, MAY TERM - July 16, 1985

L. Shyrl Brown, Petitioner, v Honorable

Aldon J. Anderson, Judge and United States of America (C/o US Attorney)

Respondents No. 85-1696

This is an original proceeding in the nature of mandamus.

Petitioner seeks to invoke the original jurisdiction of this court to review certain proceedings in the United States District Court for the District of Utah.

It is well established that the extreme remedy of mandamus is not a substitute for appeal. Accordingly, the petition for writ of mandamus is denied.

It is further ordered that the motion to disqualify the panel filed July 6, 1985, is denied.

s/ Howard K. Phillips
Howard K. Phillips, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, MAY TERM - August 13, 1985.

L. Shyrl Brown, Petitioner, vs Honorable Aldon J. Anderson, Judge and United States

of America (c/o U.S. Attorney), Respondents

No. 85-1696

This matter comes on for consideration of petitioner's petition for rehearing filed in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied.

s/ Howard K Phillips
Howard K. Phillips, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

IN THE MATTER OF THE TAX INDEBETEDNESS OF L. SHYRL BROWN, United States of America, Plaintifrf

IN THE MATTER OF THE TAX INDEBTEDNESS OF L. SHYRL BROWN, UNited States of America, Plaintiff-Appellee, v L. Shyrl Brown, Defendant Appellant.

No. 86-2244, (DC NO. C84-0651J)(D. Utah)

ORDER AND JUDGMENT

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be

of material assistance in the determination of this appeal. See Fed R App P 34(a); 10th Cir R 34.1.8(c) and 27.1.2. The cause is therefore ordered submitted without oral argument.

This is an appeal from a judgment of the United States District Court of the District of Utah which granted plaintiff's motion for Fed R Civ P 11 sanctions and attorney's fees.

On appeal, defendant argues (1) the district court lacked jurisdiction to issue an order permitting his property to be seized; (2) the district court deprived him of a trial by jury; (3) the district court deprived him of due process and the protections of the Federal Rules of Civil Procedure and United States Code; (4) the district court deprived him of his right against unreasonable search and seizure; (5) 26 USC §6331 does not apply to this action; (6)there is no proof of a proper tax assessment before the district court; (7) there has been no judicial determination of tax liability;

and (8) the District court improperly awarded sanctions against him.

Because defendant's appeal is timely only as to the order granting sanctions and attorney's fees and costs, see Fed R App P 4(a)(1), we need not consider defendant's first seven arguments on appeal. After reviewing the record and briefs on appeal, we conclude the district court appropriately ordered sanctions and attorney's fees and costs under Rule 11.

Defendant's requests that we here this case en banc and that we strike plaintiff's brief are denied.

Plaintiff resuests that we impose sanctions of $1,500 in lieu of attorney's fees and costs on defendant for bringing a legally frivolous appeal. Defendant has had an opportunity to to respond but has failed to do so.

> Courts have the inherent power to impose a variety of sanctions on...litigants...in order to regulate their docket, promote judicial efficiency, and deter frivolous filings. See, eg Roadway express Inc v Piper, 447 US 752, 764-67, 100 S Ct 2455,

2463-64, 65 L Ed 2d 488 (1980); Link v Wabash R Co, 370 US 626, 632, 82 S Ct 1368 1369, 8 L Ed 2d 734 (1962); Whitney v Cook, 99 US (9 Otto) 607, 25 L Ed 446 (1878). In addition, Fed R App P 38 and 28 USC §1912 provide that a court of appeals may award just damages and single or double costs if the court "determine(s) that an appeal is frivolous" or brought for purposes of delay. This court has imposed attorney's fees and double costs for the taking of frivolous appeals in other contexts. See eg UNited States v Ravco Inc, 616 F 2d 462 464 (10th Cir. 1980).

Stafford v Commissioner, 805 F2d 895, 896 (10th Cir 1986); Stafford v. Commissioner, 805 F 2d 893, 894-95 (10th Cir. 1986).

In light of defendant's legally frivolous appeal, an award of $1,500 is justified. See Casper v Commissioner, 805 F 2d 902, 906 (10th Cir 1986); Coleman v Commissioner, 791 F 2d 68, 72-73 (7th Cir 1986).

The judgment of the United States District Court for the District ofUtah is AFFIRMED. Additionally, a $1,500 sanction is hereby imposed against defendant for the taking of a legally frivolous appeal.

The mandate shall issue forthwith

ENTERED FOR THE COURT PER CURIAM

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT _ JULY TERM - Sept 11, 1987

IN THE MATTER OF TAX INDEBTEDNESS OF L. SHYRL BROWN, United States of America, Plaintiff-Appellee v L. Shyrl Brown, Defendant-Appellant. No 86-2244

This matter is before the court on appellant's petition for rehearing with suggestion for rehearing en banc.

The materials submitted by appellant have been reviewed by the members of the hearing panel, who conclude that the original disposition was correct. Accordingly, the petition is denied on the merits.

The petition having been denied on the merits by the panel to whom the case was submitted and no member of the panel or judge in regular active service on the court having requested that the court be polled, the suggestion for rehearing en banc is denied.

Robert L. Hoecker, Clerk
s/ Robert L. Hoecker

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT. No 86-2244. United States of America, Plaintiff, Appellee, vs L. Shyrl Brown, Defenant, Appeallant

NOTICE OF APPEAL

Notice is hereby given that L. Shyrl Brown Defendant, above named hereby appeals to the United States Supreme Court from the final order of September 11, 1987 denying my constitutional rights and imposing sanctions upon me.

Dated October 7, 1987

s/ L. Shyrl Brown
L. Shyrl Brown

VERBATIM PROVISIONS

U. S. Constitution

Fourth Amendment
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized".

FIFTH AMENDMENT
"No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

SEVENTH AMENDMENT
"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

Article III, Section 2, Clause 2
"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

TITLE 28, UNITED STATES CODE

28 USC 1651(a).
"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

28 USC 1861.
"It is the policy of the United States that all litigants in Federal Courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall havean obligation to serve as jurors when summoned for that purpose."

FEDERAL RULES OF CIVIL PROCEDURE

Rule 3.

COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.

Rule 4.

PROCESS

(a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

Rule 7.

PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

Rule 10.

FORM OF PLEADINGS

(a) **Caption; Names of Parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

RULE 12(h)

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 38.

JURY TRIAL OF RIGHT

(a) **Right Preserved.** The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties in-

Rule 64.

SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a state court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.